

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-69
Table of Allotments,)	RM-9850
FM Broadcast Stations,)	RM-9945
(Cheboygan, Rogers City, Bear Lake,)	RM-9946
Bellaire, Rapid River, Manistique,)	
Ludington, Walhalla and Onaway,)	
Michigan))	

ORIGINAL

To: Assistant Chief, Audio Division, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

NORTHERN RADIO NETWORK CORPORATION

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TABLE OF CONTENTS

Summary	i
I. BACKGROUND	1
II. ARGUMENT	5
A. Proposed Bear Lake Allotment	5
B. Proposed Bellaire Allotment	10
C. Rapid River Proposed Allotment	11
D. Comparative Considerations	12

SUMMARY

Fort Bend Broadcasting Company (“Fort Bend”) seeks reconsideration of the *Report and Order* in the above-captioned proceeding (DA 02-1156, released May 17, 2002). The *Report and Order* rejected the allotment plan Fort Bend advanced to (a) change the allotment of Station WSRQ from Channel 261A at Bear Lake, Michigan, to Channel 260C1 at Bellaire, Michigan, (b) add Channel 291A at Bear Lake as a “back-fill” allotment and (c) add Channel 259A at Rapid River, Michigan. Adoption of the Fort Bend proposal would have required several other changes in the Table of Allotments, including changing the frequency of WHAK-FM, Rogers City, Michigan (of which Northern Radio Network Corporation (“NRN”) is the licensee) from Channel 260C2 to Channel 292C2.

NRN demonstrated that the Fort Bend proposal suffered from numerous defects, including the fact the reference point for the Bear Lake back-fill allotment was located in Bar Lake Swamp and that significant terrain obstructions precluded adoption of the proposed allotments at both Bellaire and Bear Lake. NRN also pointed out that the proposed reference point for the Rapid River allotment was located in a National Forest and that no usable site had been shown to be actually available.

In its *Report and Order*, the Commission’s staff, without needing to reach the other points NRN raised, rejected Fort Bend’s proposal because no suitable site in Bar Lake Swamp had shown to be available for the back-fill Bear Lake allotment. The *Report and Order* adopted NRN’s counterproposal to allot Channel 292C2 at Onaway, Michigan as that community’s first local service and Channel 249C3 at Cheboygan, Michigan as that community’s second FM service.

Fort Bend, on reconsideration, presents numerous additional factual exhibits to support adoption of its allotment proposal. Those exhibits come far too late in the process and should be rejected pursuant to Section 1.429(b) of the Rules. The circumstances Fort Bend relies on certainly are not new and, with the exercise of ordinary diligence, could have been presented in Fort Bend's comments, reply comments or further reply comments filed prior to the issuance of the *Report and Order*. Furthermore, even if the new evidence Fort Bend proffers were to be considered, Fort Bend's proposal still suffers from fatal defects. Terrain obstructions block adoption of both the Bear Lake and Bellaire proposals. Further, the alternate reference points for the Bear Lake allotment that Fort Bend cites, in fact, are not suitable. Finally, Fort Bend has made no showing that a site for Channel 259A at Rapid River actually is available.

Under the circumstances, the *Report and Order* should be affirmed.

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To: Assistant Chief, Audio Division, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Northern Radio Network Corporation ("NRN") herein opposes the Petition for Reconsideration filed in the above-captioned proceeding by Fort Bend Broadcasting Company ("Fort Bend"). In opposition, the following is stated:¹

I. BACKGROUND

On April 25, 2000, the Commission released a *Notice of Proposed Rulemaking and Order to Show Cause*, DA 00-916 ("NPRM"), regarding the proposal of Escanaba License Corp. to allot Channel 2602 at Cheboygan, Michigan, as that community's second FM service. That proposed

¹ Northern Radio of Michigan, Inc. ("Radio Michigan") also filed a Petition for Reconsideration in this proceeding. As discussed below, NRN fully supports Radio Michigan's position regarding the fatal defects in Fort Bend's proposal to allot Channel 260C1 at Bellaire, Michigan. NRN, however, disagrees with Radio Michigan's position that Channel 291A can be allotted at Bear Lake in compliance with the Commission's rules and policies.

allotment would have required WHAK-FM, Rogers City, Michigan, of which NRN is the licensee, to change its frequency from Channel 260C2 to Channel 292C2. Two sets of timely counterproposals were filed:

1. NRN proposed that Channel 292C2 be allotted at Onaway, Michigan as that community's first aural service and that Channel 249C3 be allotted to Cheboygan as that community's second FM service. NRN pledged to file applications for each channel and build each station for which it was awarded a construction permit. Adoption of NRN's counterproposal would not require WHAK-FM to change frequency.

2. Fort Bend, in conjunction with D & B Broadcasting, LLC, which was then the licensee of WSRQ(FM), Bear Lake, Michigan,² proposed substituting Channel 260C1 for Channel 260A as WSRQ's frequency and changing the station's community of license from Bear Lake to Bellaire, Michigan. In light of the fact that WSRQ is Bear Lake's only local aural service, Fort Bend proposed allotment of Channel 291A at Bear Lake as a new allotment. Fort Bend further proposed allotment of Channel 259A at Rapid River, Michigan. In order to implement the Fort Bend proposal, allotments at Rogers City (*i.e.*, WHAK-FM's frequency), Manistique, Ludington, and Walhalla, Michigan would have to be changed.

In Reply Comments filed July 3, 2000, NRN discussed the fatal defects in Fort Bend's allotment proposals for Bellaire, Bear Lake and Rapid River, Michigan. With respect to Bellaire,

² Subsequently Fort Bend acquired Station WSRQ. Because its interests coincide with Fort Bend's, D & B Broadcasting, LLC shall not be separately referred to herein.

a significant terrain obstruction precluded delivery of a city-grade signal to the community. With respect to Bear Lake, NRN noted that the proposed reference point for the allotment is located in Bar Lake Swamp and that Fort Bend had not shown that the location, in fact, is usable. Further, NRN pointed out that terrain obstructions prevented delivery of a city-grade signal from the proposed reference point to Bear Lake. Finally, with respect to Rapid River, NRN noted that the proposed reference point was located in Hiawatha National Forest, which has few access roads or power lines. NRN pointed out that when a proponent proposes a reference point in a National Forest, that proponent is required to demonstrate that in fact the site is available for use. In this case, Fort Bend failed to do so. NRN noted that an alternate frequency, Channel 224A, was available for allotment at Rapid River.

Fort Bend filed Reply Comments on July 3, 2000, and additional Reply Comments (hereafter “Further Reply”) on September 15, 2000.³ In the body of its Further Reply, Fort Bend stated that “the questions raised as to terrain shielding (at Bellaire and Bear Lake), [and] alleged swamp location/national forest site questions at Bear Lake are all addressed and positively answered in detail in the attached engineering statement by Mr. [Fred W.] Hannel.” *Id.* p. 2. Mr. Hannel’s attached engineering statement did attempt to counter NRN’s showing regarding the terrain obstructions precluding the proposed Bellaire and Bear Lake allotments. But he said nothing regarding the suitability of the site in Bar Lake Swamp specified as the reference point for Channel 291A at Bear Lake.

³ Fort Bend’s Further Reply was late-filed and accompanied by a motion requesting that it be considered nonetheless.

With respect to the terrain obstructions precluding the proposed Bellaire allotment, Mr. Hannel said an antenna with a center of radiation at approximately 640 meters AMSL and 375 meters (1230.3 feet) above ground level would provide the community with the required line-of-sight signal. With respect to the terrain obstructions blocking the Bear Lake allotment, Mr. Hannel said an antenna with a center of radiation approximately 500 meters AMSL and 319 meters (1046.6 feet) above ground level would “illuminate the city with a line-of-sight signal.” Hannel Engineering Statement at p. 4.

Fort Bend did not present any sort of “Tech Note 101” or other study using an alternate methodology to demonstrate that the terrain obstructions in the vicinity of Bellaire and Bear Lake could be overcome.

With respect to the fact the proposed reference point for the Rapid River allotment is in Hiawatha National Forest, Mr. Hannel pointed to a publication prepared by the *Michigan* Department of Natural Resources (“DNR”) regarding procedures for requesting authority to construct facilities in areas under that agency’s jurisdiction. *Id.* Of course, the procedures of the state DNR have no bearing whatsoever on the location of a transmitter site in a National Forest.

In the *Report and Order* released in this proceeding on May 17, 2002 (DA 02-1156), the Commission’s staff dismissed Escanaba License Corp.’s proposal for failure to file a timely expression of interest, denied Fort Bend’s proposal and granted NRN’s proposal. In denying Fort Bend’s proposal, the Commission’s staff stated that its engineering analysis found that the proposed site for Channel 291A indeed was located in Bar Lake Swamp and was determined to be an usable site. Because Channel 291A could not be allotted to Bear Lake as a “back-fill channel,” reallocation

of Channel 260C1 to Bellaire would remove the sole local service from Bear Lake. For that reason, The Commission denied Fort Bend's proposal.

Having reached a decision on those grounds, the Commission's staff did not reach (and did not comment upon) the terrain obstruction defects NRN raised with respect to the proposed Bellaire and Bear Lake allotments.

Thereafter Fort Bend (a) retained new legal counsel, (b) retained a new consulting engineer and (c) filed the Petition for Reconsideration now under consideration. In its reconsideration petition, Fort Bend presents several exhibits regarding the supposed suitability of the site in Bar Lake Swamp specified as the reference point for the allotment of Channel 291A at Bear Lake. Fort Bend also presents a Tech Note 101 study purportedly showing that WSRQ could provide a city-grade signal to Bellaire if a 280.2 meter (919.3 foot) tower were constructed.⁴

II. ARGUMENT

For the reasons discussed below, Fort Bend's eleventh hour efforts to salvage its allotment plan are unavailing. The *Report and Order* should be affirmed.

A. Proposed Bear Lake Allotment

In its Petition for Rulemaking, Fort Bend made no mention of the fact that its proposed reference point for the Bear Lake back-fill allotment was located in Bar Lake Swamp. By simply plotting the reference point on a USGS quadrangle map that fact would have been obvious. Furthermore, the fact the site is in Bar Lake Swamp specifically was raised in NRN's Reply

⁴ Fort Bend states that use of an eight-bay full-wave antenna on such a tower would produce a center of radiation 268.2 meters (879.9 feet) above ground level.

Comments. Still, in its Further Reply, Fort Bend presented nothing to demonstrate the proposed site was usable. Only when it sought reconsideration did Fort Bend come forward with a sheath of exhibits purporting to show that the site was usable. Those exhibits came far too late in the process to warrant consideration.

Section 1.429(b), which deals specifically with petitions for reconsideration in rulemaking cases, provides as follows:

A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

(1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;

(2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts relied on is required in the public interest.

Here, Fort Bend satisfies none of the three tests. Most clearly, the facts Fort Bend relies upon have not changed since the last opportunity to present them. Equally clearly, the materials Fort Bends presents could have been developed and presented in Fort Bend's petition for rulemaking, its comments in response to the *NPRM* or, at the latest, in its Further Reply. Finally, consideration of the materials Fort Bend now presents would not be in the public interest and would unfairly prejudice NRN and the other parties in this proceeding.

Fort Bend relies heavily upon *Moncks Corner, South Carolina*, 15 FCC Rcd 8973 (Chief, Allocations Branch 2000). That case, however, was decided in an entirely different procedural context. In the *Report and Order* in the Moncks Corner proceeding, 11 FCC Rcd 8630 (Chief, Allocations Branch 1996), the Commission denied both the petition of Sand Pit Broadcasters (“SB”) to allot a channel at Sand Pit, South Carolina, and the petition of L. M. Communications II of South Carolina, Inc. (“LMC”) to upgrade Station WNST(FM) from Class C3 to Class C2 status and change the station’s community of license from Moncks Corner to Kiawah Island, South Carolina. The proposed allotment at Sand Pit was denied because the staff concluded that that location was not a “community” for allotment purposes. The LMC relocation was denied because the reference point presented was located in marshland and too close to a local airport to be utilized as the proposed transmitter site. In their respective reconsideration petitions, both SB and LMC presented additional materials to support their proposals.

On reconsideration, the staff, citing the “public interest” prong of the reconsideration rule, Section 1.429(b)(3), gave full consideration to the additional materials presented by LMC and SB. *Moncks Corner, supra*, at ¶¶ 8, 12. Significantly, since the *Report and Order* in the Moncks Corner proceeding denied both rulemaking proposals, neither party could claim that it was prejudiced by the staff’s consideration of additional facts presented for the first time on reconsideration.

In stark contrast, consideration of Fort Bend’s additional evidence would prejudice NRN, which diligently prosecuted its allotment proposal, and the other parties in this proceeding and would be contrary to the public interest. The Commission has long recognized it is not in the public interest to allow a party to sit back and hope that a decision will in its favor, and when not, to parry with additional submissions. The Commission’s rulemaking process cannot operate efficiently,

expeditiously or fairly if such a procedure were allowed. *E.g.*, *Galesburg, Illinois*, 15 FCC Rcd 25559, ¶ 5 (Chief, Allocations Branch 2000), *citing Colorado Radio v. FCC*, 118 F.2d 24 (D.C. Cir. 1941); *accord, e.g.*, *Littlefield, Arizona*, 2000 FCC Lexis 5856, DA 00-2483 (Chief, Allocations Branch, released November 3, 2000); *Safford, Arizona*, 8 FCC Rcd 4498 (Chief, Policy and Rules Div. 1993); *Vacaville, California*, 6 FCC Rcd 143, 144-45 (¶ 11) (Chief, Policy and Rules Div. 1991); *Santa Margarita, California*, 4 FCC Rcd 7887, 7889 (Chief, Policy and Rules Div. 1989).

None of the other cases Fort Bend cites⁵ supports the proposition that a proponent who is made aware that it has specified a reference point in an area designated on a USGS map as a swamp may wait until the reconsideration stage of the proceeding to present evidence purporting to show that the site in question is on dry land.

Furthermore, the Bar Lake Swamp site Fort Bend specifies will not provide adequate coverage for Bear Lake. As demonstrated in the Engineering Statement of Munn-Reese, Inc. attached hereto, terrain obstructions between Bar Lake Swamp site and Bear Lake preclude city-grade coverage to the community. *See* Munn-Reese Exhibit 1. The significance of the obstruction

⁵ *Randolph, Vermont*, 6 FCC Rcd 1760 (Chief, Allocations Branch 1991); *Rockport, Texas*, 4 FCC Rcd 8075 (Chief, Allocations Branch 1989); *Homerville, Georgia*, 8 FCC Rcd 2953 (Chief, Allocations Branch 1993).

is highlighted by the fact, using the standard methodology set forth in Section 73.313 of the Rules, only 20% of Bear Lake would be within the city-grade contour. See Munn-Reese Exhibits 2 and 3.⁶

Both Fort Bend and Radio Michigan note that, on the same day the *Report and Order* in this proceeding was released, a decision in another proceeding, *Honor, Michigan*, DA 02-155 (Assistant Chief, Audio Division), identified two reference points supposedly suitable for allotment of Channel 291A at Bear Lake, Michigan. *Id.* at n.4. Reliance on this footnote is misplaced. First, no allotment to Bear Lake was made in the *Honor* proceeding. Instead, Channel 263A was allotted at Custer, Michigan. Thus, the identification of supposedly suitable reference coordinates is nothing more than dicta. More importantly, the reference points listed, in fact, are not suitable.

The first set of coordinates cited (44-37-25 NL, 86-00-19 WL) are no where near Bear Lake. See Munn-Reese Exhibit 4. No portion of Bear Lake would be provided city-grade coverage from

⁶ It is true that if one simply were to draw a circle using the proposed reference point as the center and radius of 16.2 kilometers, Bear Lake would be within the circle. Such circles have been used for allotment purposes in the past. *E.g., Woodstock, Virginia*, 3 FCC Rcd 6398, 6399 (1998). But the full Commission's decision in *Cloverdale, Alabama*, 15 FCC Rcd 11050 (2000) raises a question as to whether a simple circle is still the standard. That decision indicates that the methodology of Section 73.313 is to be employed, in that average terrain calculations as determined using the eight cardinal radials from the reference point are to be used in determining whether the entire community is provided the requisite 70 dBu signal coverage. *Id.* at ¶ 10; *accord, id.* at ¶ 6. In any case, given the maturity of the FM broadcast service and the ready availability of computer programs capable of calculating accurate contours pursuant to Section 73.313, the time for using simple circles has passed. The failure to take heed of the requirements of Section 73.313 at the allotment stage has led in various cases to adoption of defective allotments — allotments for which no suitable transmitter site exists. In defending the use of simple circles, the Commission has said that since the site studied at the allotment stage may not be the transmitter site specified at the application stage, full application of Section 73.313 (*i.e.*, taking terrain into consideration) is unwarranted. But if terrain is not considered and if the proponent does not show that operation from at least one site will produce a suitable city-grade contour, the Commission will have no assurance that *any* application for the allotment can be granted.

those coordinates. The site is 25.23 kilometers from Bear Lake and short-spaced to an existing station. *See* Exhibit 5.

The other supposed Bear Lake reference point cited in *Honor* (44-17-37 NL, 86-13-26 WL) also is inadequate. The attached Munn-Reese Engineering Statement demonstrates that major terrain obstructions preclude line-of-site coverage of Bear Lake. *See* Munn-Reese Exhibit 6. Indeed, even using the Longley-Rice method to calculate coverage, only 85.43% of Bear Lake would be within the 70 dBu contour. *See* Munn-Reese Exhibit 7. The Commission has recognized that in the allotment context, absent extraordinary circumstances not present here, the Commission strictly adheres to the coverage requirements of Section 73.315(a). *E.g.*, *Cloverdale, Alabama, supra*; *Caldwell, Texas*, 15 FCC Rcd 3322 ¶ 14 (2000), *appeal denied sub. nom. Henderson v. FCC*, D.C. Cir. No. 98-1372 et al. (May 21, 2001).⁷

B. Proposed Bellaire Allotment

Fort Bend attempts to brush away the significance of the obstructions between its proposed reference point and Bellaire. Contrary to Fort Bend's characterization, more than a "number of dips"

⁷ Using the standard methodology of Section 73.313, no portion of Bear Lake would be within the city-grade contour. *See* Munn-Reese Exhibit 8. As noted previously, Mr. Hannel's Engineering Statement attached to Fort Bend's Further Reply asserted that city-grade coverage could be accomplished if one were to build a 319 meter (1,046.6 foot) tower. Significantly, Fort Bend provided no assurance it would build such a tower. Given the extraordinary cost of construction of such a tower and the small audience the station would reach, the Commission should not simply assume the requisite facility will be built. *See, e.g., The Dalles, Oregon*, DA 96-106, ¶ 3 (Chief, Allocations Branch 1996).

is involved. As Radio Michigan pointed out, and Munn-Reese Exhibit 9 illustrates, a severe obstruction is located approximately 33 kilometers from the proposed reference site.⁸

To try to overcome these obstructions, Fort Bend's reconsideration petition relies upon specification of an extraordinarily tall tower (919.3 feet)⁹ and, for the first time, use of a Tech Note 101 study. Significantly, Fort Bend provides no justification whatsoever for waiting until the reconsideration stage of this proceeding to present a Tech Note 101 study. Under Section 1.429(b), the study Fort Bend proffers should be disregarded. *E.g., Vacaville, California, supra* (Tech Note 101 study presented for the first time on reconsideration rejected pursuant to Section 1.429(b)). Alternatively, the Commission's staff should consider the Tech Note 101 study NRN proffers herewith. That study, using a more detailed methodology, demonstrates that only 89.72% of Bellaire would be within the station's city-grade coverage contour. *See Munn-Reese Exhibits 9A - 9C, 10.* Since, as noted above, the Commission insists on strict compliance with the city-grade coverage requirement at the allotment stage, Fort Bend's proposed Bellaire allotment clearly is deficient. *E.g., Cloverdale, Alabama, supra; Caldwell, Texas, supra.*

C. Rapid River Proposed Allotment

Fort Bend does not dispute that the reference point specified for the proposed allotment of Channel 259A at Rapid River, Michigan is located within the Hiawatha National Forest. When a

⁸ Exhibit 9D depicts the terrain profile produced using manual calculation of the topographic data. Section 73.312(d) of the Rules indicates that such a calculation, in lieu of a computer-generated study, is to be used in cases where a dispute exists. This alternate method confirms the existence of major terrain obstructions near Bellaire.

⁹ Of course, in Fort Bend's Further Reply, Mr. Hannel proposed construction of a tower at least 375 meters (1220.3 feet) above ground level.

reference point is located in a National Forest, the Commission does not simply presume that a suitable transmitter site will be available. Typically, in such cases, the Commission requires a showing that a site is available for use. *E.g. Arcadia, Missouri*, 12 FCC Rcd 11388 (Chief, Allocations Branch 1997); *Superior, Montana*, 12 FCC Rcd 1956 (Chief, Allocations Branch 1997); *Cassville, Missouri*, 10 FCC Rcd 13781 (Chief, Allocations Branch, 1995); *Big Sky, Montana*, 10 FCC Rcd 10343 (Chief, Allocations Branch, 1995). When a proponent shows that a site is available either on an established electronics site¹⁰ or on private property,¹¹ or that space on an existing tower is available,¹² the allotment will be added. On the other hand, if a proponent specifying a reference point in a National Forest does not demonstrate that a site actually is available for use, the proposal will be denied. *See Neihart, Montana*, 14 FCC Rcd 18977 (Chief, Allocations Branch 1999).

Because Fort Bend has failed to demonstrate that a suitable site for the allotment of Channel 259A at Rapid River exists, that proposal must be denied. But, as noted in NRN's Reply Comments, an alternate frequency, Channel 224A, is available for allotment of Rapid River. That allotment meets all spacing requirements at the reference point for the community itself (*i.e.*, outside the National Forest) and does not require any other change in the Table of Allotments.

D. Comparative Considerations

Even if, for the purposes of argument, the Commission were to overlook Fort Bend's failure to satisfy Section 1.429(b) and the defects in its allotment proposals for Bear Lake, Bellaire and

¹⁰ *E.g., Ruidoso, New Mexico*, 12 FCC Rcd 6054 (1997).

¹¹ *E.g., Cassville, Missouri*, 11 FCC Rcd 4682 (Chief, Allocations Branch 1996).

¹² *E.g., Harrietta, Michigan*, 12 FCC Rcd 6058 (Chief, Allocations Branch 1997).

Rapid River, NRN's proposal still should be favored. First, because a non-conflicting channel can be allotted at Rapid River, the fact that community would receive its first local service does not enter into the comparative calculus. Instead, the comparison must be made between Fort Bend's proposal to bring a first local service to Bellaire (population 1,164)¹³ and NRN's proposal to bring a first local service to Onaway, Michigan (population 993). Thus, if adopted, Fort Bend's proposal would provide a local service to 171 more persons than would NRN's proposal. But to gain that minor advantage, Fort Bend would require *five* other changes in the FM Table of Allotments,¹⁴ the construction of 1046.6 foot tower (per the calculations in Fort Bend's Further Reply) to serve Bear Lake (population 318) and construction of a 919.3 foot tower (per the calculations in Fort Bend's reconsideration petition) to serve Bellaire. In contrast, adoption of NRN's proposal would require no other changes in the Table of Allotments and would provide a first local service to Onaway and a second FM service at Cheboygan, Michigan (population 5,295). At some point, the significant disruption to the listening public occasioned by requiring existing stations to change their frequencies must be found to outweigh a minor advantage under the "first local service" criterion.

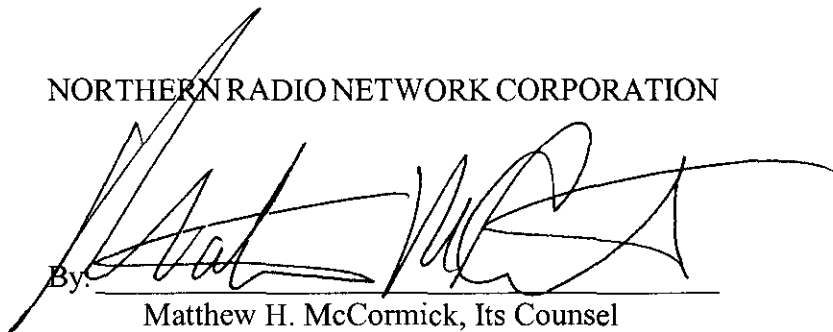
¹³ All population figures are from the 2000 Census.

¹⁴ The Commission's policy, set forth in *Columbus, Nebraska*, 59 RR 2d 1185 (1986), is to reject any rulemaking proposal involving more than two involuntary channel changes. As the history of this proceeding indicates, the proposed channel changes at Rogers City and Ludington most certainly are involuntary. With respect to Manistique allotment, Todd Stewart Noordyk, who at the time had won the auction for the allotment but had not yet been awarded a construction permit, stated he neither supported nor opposed the Fort Bend proposal. Noordyk Reply Comments, filed June 30, 2000, at p. 2. Subsequently, on December 18, 2001, Mr. Noordyk was awarded the construction permit for the station, which now bears the call sign WPIQ. To the best of the knowledge of NRN's counsel, Mr. Noordyk has not endorsed the Fort Bend proposal since he became permittee of the Manistique station. Thus, there is now a significant question whether Fort Bend's proposal still complies with the *Columbus* policy.

That point has been reached in this case. Clearly, when all factors are considered, NRN's proposal better serves the public interest.

WHEREFORE, IN LIGHT OF ALL CIRCUMSTANCES PRESENT, Fort Bend's petition for reconsideration should be DENIED.

NORTHERN RADIO NETWORK CORPORATION

By: 
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August 6, 2002

ENGINEERING STATEMENT
OF
MUNN-REESE, INC.
IN
MM DOCKET NO. 00-69
ON BEHALF OF
NORTHERN RADIO NETWORK CORPORATION

TABLE OF CONTENTS

Opposition for Petition for Reconsideration for MM Docket No. 00-69

1. Certification of Engineers
2. Discussion of Report
3. Exhibit 1 - RADD291A Bear Lake, MI Terrain Profile Study
4. Exhibit 2 - RADD291A Bear Lake, MI Coverage Map
5. Exhibit 3 - RADD291A Bear Lake, MI Expanded View Map
6. Exhibit 4 - FCC Site #1 Bear Lake, MI Coverage Map
7. Exhibit 5 - FCC Site #1 Bear Lake, MI Allocation Study
8. Exhibit 6 - FCC Site #2 Bear Lake, MI Terrain Profile Study
9. Exhibit 7 - FCC Site #2 Bear Lake, MI Expanded View Map
10. Exhibit 8 - FCC Site #2 Bear Lake, MI Coverage Map
11. Exhibit 9A-D - RADD260C1 Bellaire, MI Terrain Profile Studies
12. Exhibit 10 - RADD260C1 Bellaire, MI Expanded Coverage Map

CERTIFICATION OF ENGINEER

The firm of Munn-Reese, Inc., Broadcast Engineering Consultants, with offices at 100 Airport Drive, Coldwater, Michigan, has been retained for the purpose of preparing the technical data forming this report.

This report has been prepared by properly trained electronics specialists, under the direction of the undersigned, whose qualifications are a matter of record before the Federal Communications Commission.

I declare under penalty of perjury that the contents of this report are true and accurate to the best of my knowledge and belief.

August 5, 2002

MUNN-REESE, INC.

By Wayne S. Reese
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DISCUSSION

Page 1 of 1

This firm was retained by Northern Radio Network to prepare engineering exhibits in support of an Opposition to the Petition for Reconsideration of Fort Bend Broadcasting Company ("Fort Bend") in MM Docket No. 00-69. In particular, this engineering addresses proposals to add Channel 260C1 to Bellaire, MI and the substitution of Channel 291A at Bear Lake, MI.

Exhibit 1 is a terrain profile study of the path from the reference point proposed by Fort Bend in their original rulemaking petition at NL 44°19'44" and WL 86°16'14" to the reference point of Bear Lake. Assuming a radiation center at 100 meters height above average terrain (HAAT), there is a major terrain obstruction in the path. This is in contravention to 47 C.F.R. §73.315(b) of the FCC Rules. Exhibit 2 is a map showing the coverage of Bear Lake from this same site assuming a maximum Class A facility and uniform terrain. This gives a 16.2 kilometer circle from this reference point. This circle covers 100% of the city limits of Bear Lake. However, on the same map, the 3.16 mV/m (70 dBu) city grade contour as determined by method in §73.313 of the rules shows the contour falling well short of 100% coverage of the city limits. Exhibit 3 is a detailed map showing the coverage of this contour with the actual city limits shown. (Note: All city limits shown in this report were derived from the U.S. Census Tiger maps.) This exhibit demonstrates that only 19.95% of the community would be covered by the city grade contour.

Exhibit 4 is a map showing one of the two reference points suggested by the FCC in MM Docket No. 01-186 (DA 01-1155, rel. May 17, 2002) as possible locations from which Channel 291A could be proposed for Bear Lake. This particular site, referred to as FCC Supplied Site #1, has coordinates of 44°37'25" NL and 86°00'19" WL. This map demonstrates that from these coordinates neither a 16.2 kilometer Class A maximum facility circle or 3.16 mV/m (70 dBu) city grade contour as determined by §73.313 will come close to covering the city of Bear Lake. The community reference point of Bear Lake is 25.23 kilometers from these proposed coordinates. Exhibit 5 is a tabulation of spacings from this reference point, showing the site to be 38.29 kilometers short-spaced to first adjacent channel station WKHQ, Charlevoix, MI on 290C1. This renders the FCC proposed reference point totally useless. It appears the coordinates supplied by the FCC were in error.

DISCUSSION

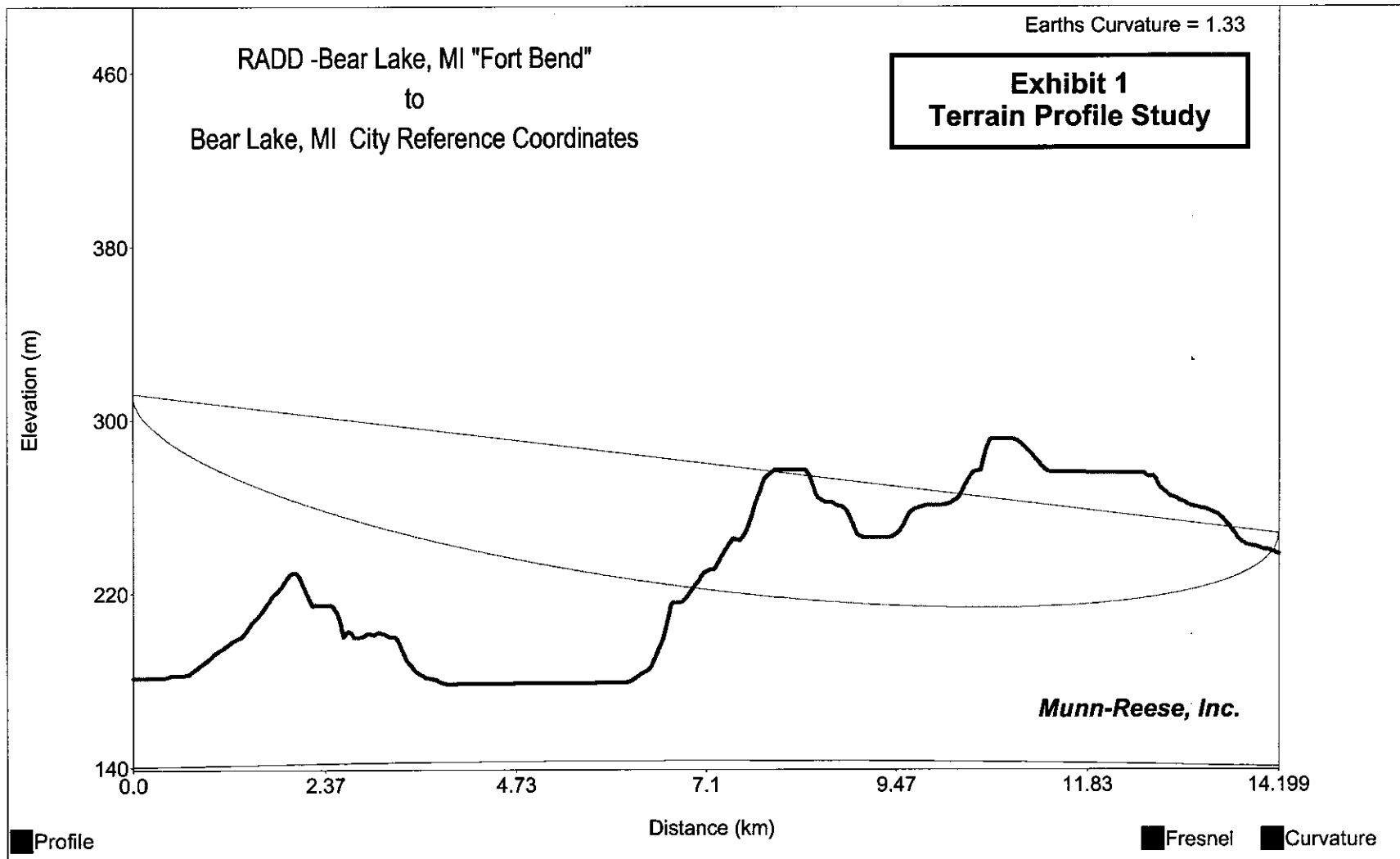
Page 2 of 2

Exhibit 6 is a terrain profile study from the second reference point suggested by the FCC in MM Docket No. 01-186 (DA 01-1155, rel. May 17, 2002) as a possible location from which Channel 291A could be proposed for Bear Lake. This particular site, referred to as FCC Supplied Site #2, has coordinates of 44°17'37" NL and 86°13'26" WL. Assuming a radiation center at 100 meters HAAT (308 meters AMSL), this site would also have major terrain obstructions in its path to the Bear Lake reference coordinates. This, again, is in contravention to 47 C.F.R. §73.315(b) of the FCC Rules. Exhibit 7 is a map showing an alternative method for calculating FM field strength using Technote 101 or the Longley-Rice propagation model. The two unshaded areas in the city denote areas where the signal drops below 3.16 mV/m or 70 dBu city grade level. This calculation employed the use of a 3-second terrain database with a resolution of 0.1 kilometer square grids to determine field strength. Again, since 100% of the community cannot be covered with city grade signal, this reference point location should not be considered. Exhibit 8 shows that while the maximum Class A facility, assuming uniform terrain, city grade circle of 16.2 kilometers covers 100% of the city limits of Bear Lake, the FCC method of calculating this contour from the method described in §73.313 of the Rules will not cover any of the city of Bear Lake from this location because of terrain factors.

Exhibits 9A, 9B, and 9C are terrain profiles from the proposed reference point of Channel 290C1 for Bellaire, MI to that community's northern city limit, the community's reference coordinates, and the southern city limit, respectively. Assuming a radiation center providing a maximum class height above average terrain of 299 meters (502.8 meters AMSL), it is clearly demonstrated that a major terrain obstruction exists to all three locations studied in contravention of §73.315(b) of the rules. In light of controversy regarding the use of computerized terrain profiles, Exhibit 9D has been prepared employing the four topographical maps from the Bellaire rulemaking reference point to the reference coordinates of the community of Bellaire. A line between these two locations was drawn on the topographical maps and the elevation was extracted every 0.1 kilometers along the radial in 5-meter intervals as provided on the mapping. Since the computer software program used for the other terrain profiles did not allow for the input of this data, the profile was plotted using an Excel spreadsheet. This exhibit, while not able to show earth curvature, clearly shows that a major terrain obstruction exists

between the rulemaking reference point and the proposed community of license in violation of §73.315(b). A tabulation of the individual elevations can be provided if requested by the Commission.

Finally, Exhibit 10 of this report again employs the use of Technote 101 or the Longley-Rice propagation model to determine the location of the city grade 3.16 mV/m or 70 dBu signal within the city limits of Bellaire. There are two locations within the city limits that fail to receive a 70 dBu signal. For allocation purposes, 100% of the city must receive this signal level. While Fort Bend provided a Technote 101 showing in their Petition for Reconsideration, Exhibit 10 likely employs a much finer resolution of 0.1 kilometer square grids to determine field strength. Exhibit 10 was generated by using V-Soft Communications, Inc. Probe II computer software. Fort Bend did not provide specific information as to what computer software program or parameters were used in their calculations.



Starting Latitude: 44-19-41 N
Starting Longitude: 086-16-14 W

End Latitude: 44-25-15 N
End Longitude: 086-08-53 W

Distance: 14.198902023 km
Bearing: 43.400 deg

Transmitter Height (AG) = 131.0 m
Receiver Height (AG) = 9.1 m

Transmitter Elevation = 181.0 m
Receiver Elevation = 238.3 m

Frequency = 106.1 MHz
Fresnel Zone: 0.6

RADD - "Fort Bend"
Latitude: 44-19-41 N
Longitude: 086-16-14 W
ERP: 6.00 kW
Channel: 291
Frequency: 106.1 MHz
AMSL: 312 m
HAAT: 100 m
With Truncated Radials
Over Lake Michigan

Exhibit 2
Coverage Map of RADD - Bear Lake, MI
(Fort Bend Broadcasting Company)

70 dBu City Coverage

16.2 km Class A City Reference Limit

Copemish

Kaleva

Bear Lake

Onkama

RADD

Manistee

Manistee

Munn-Reese, Inc.

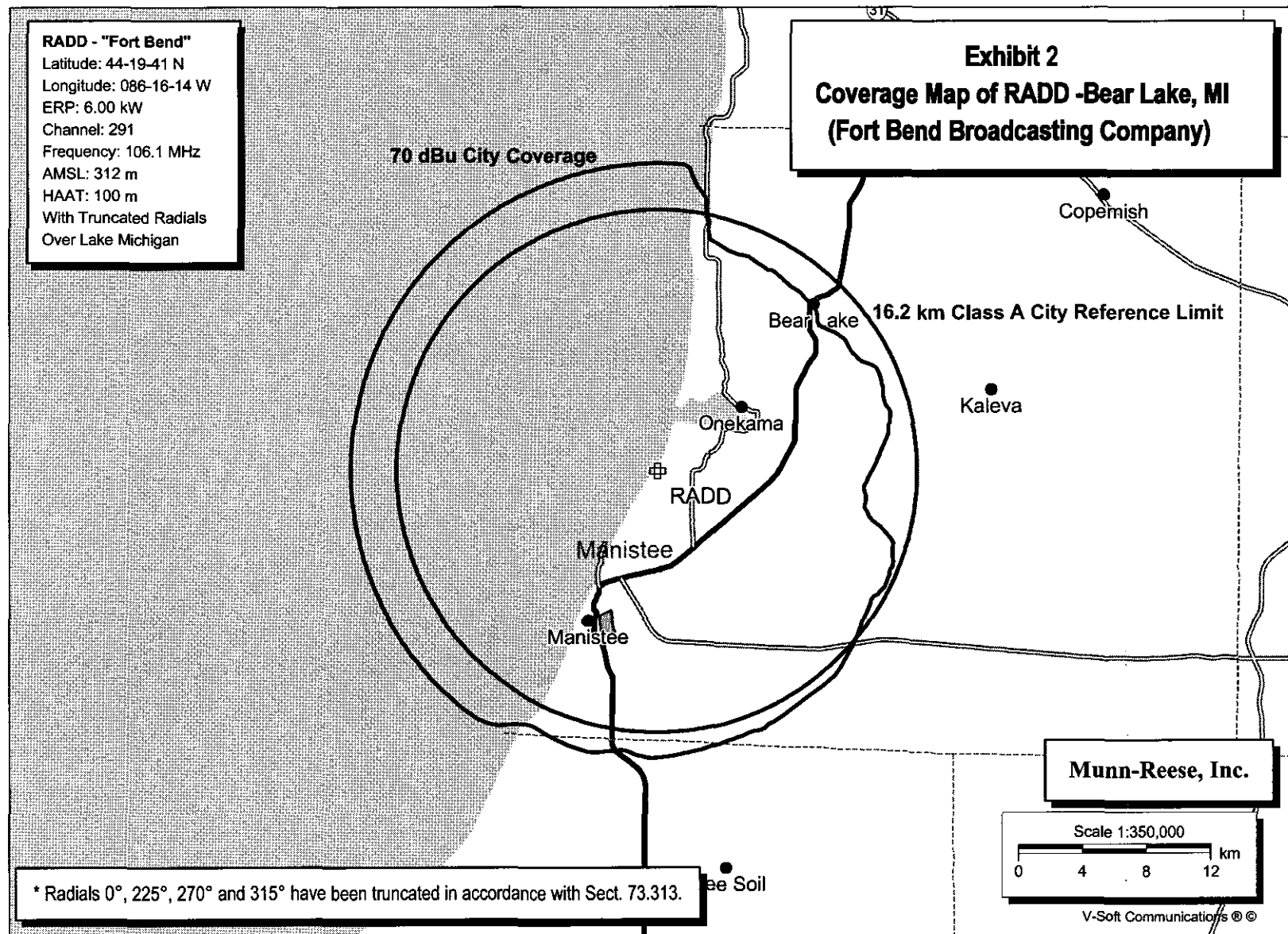
Scale 1:350,000

0 4 8 12 km

V-Soft Communications © ©

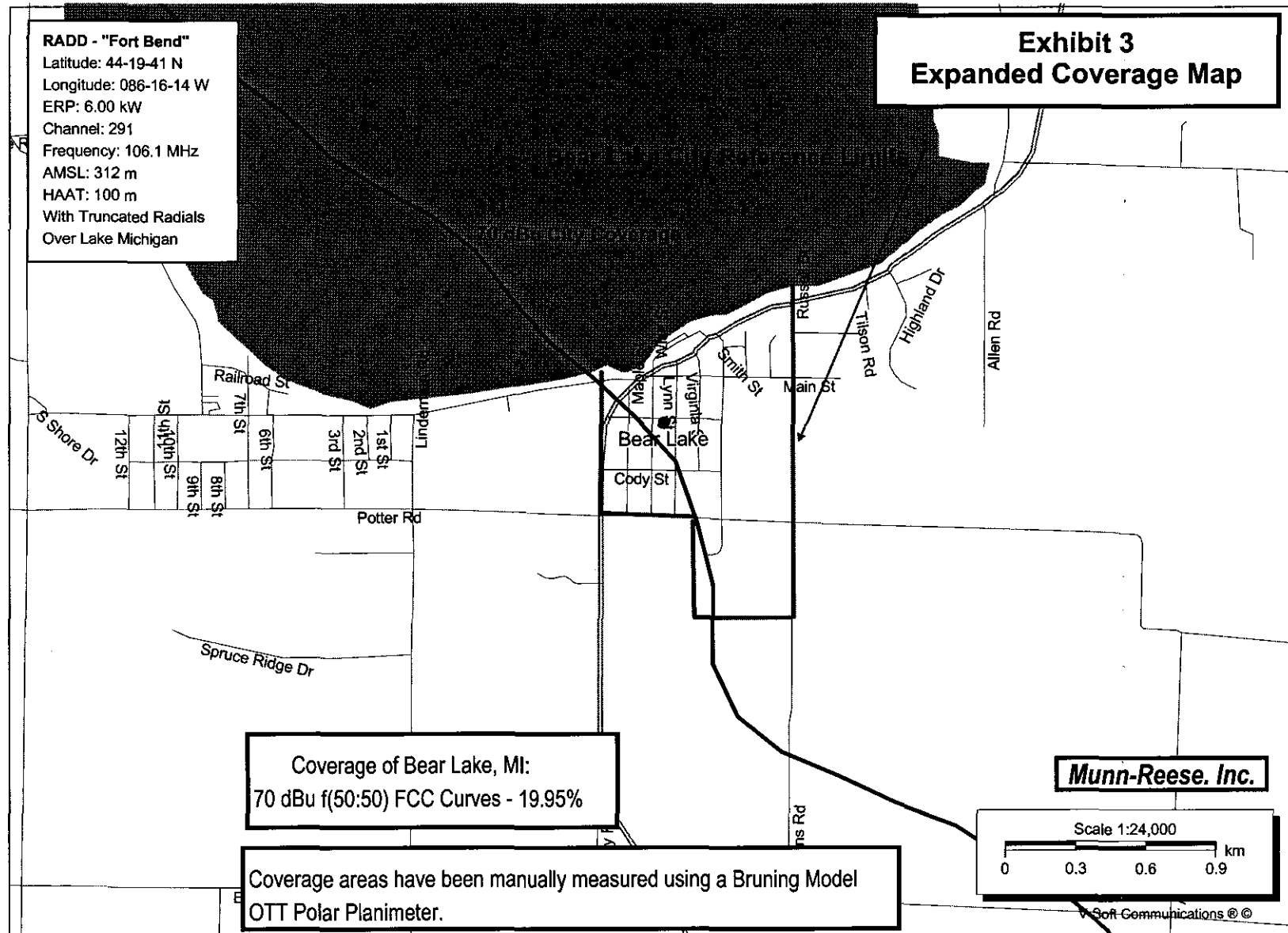
* Radials 0°, 225°, 270° and 315° have been truncated in accordance with Sect. 73.313.

Soil



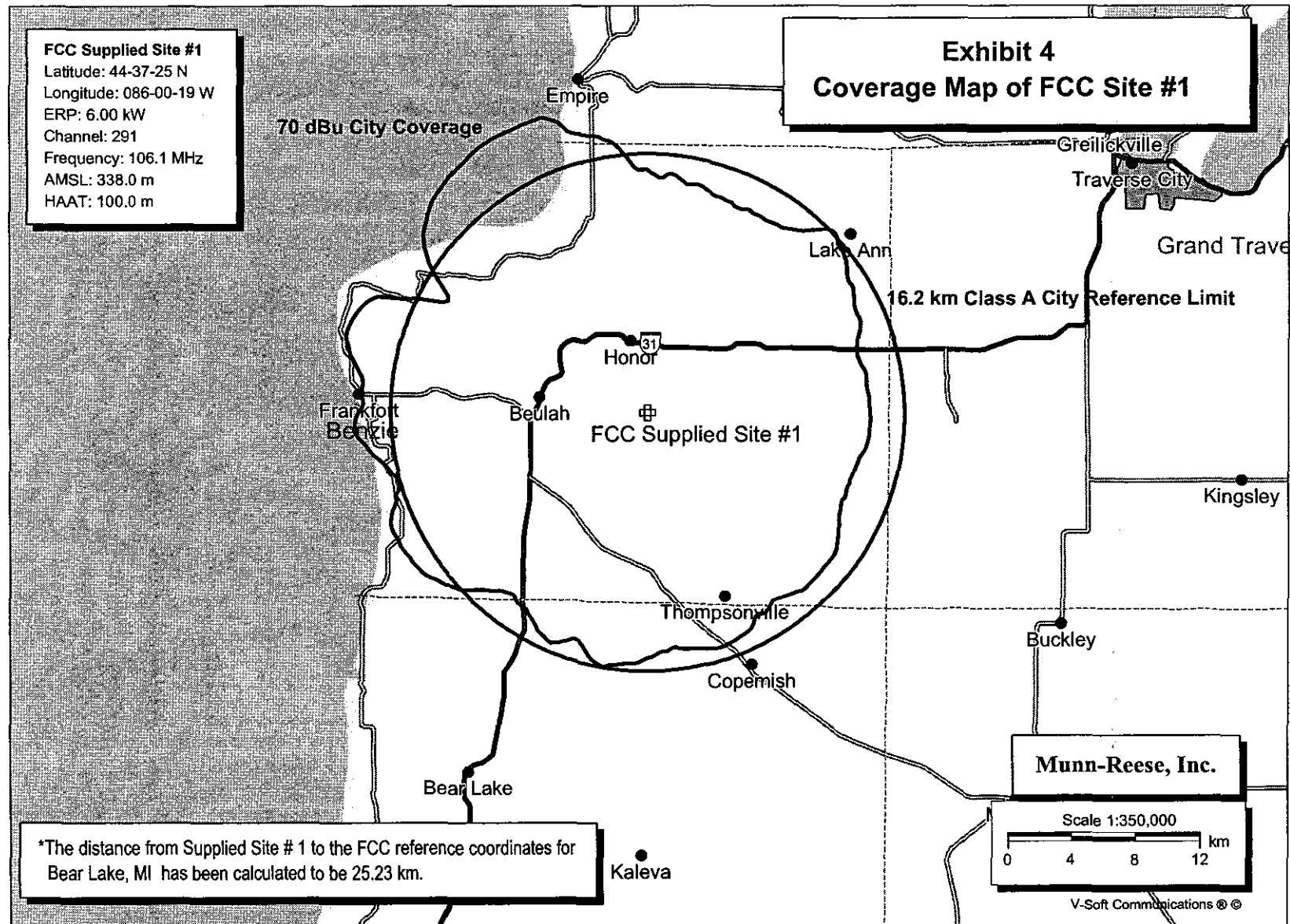
Latitude: 44-19-41 N
Longitude: 086-16-14 W
ERP: 6.00 kW
Channel: 291
Frequency: 106.1 MHz
AMSL: 312 m
HAAT: 100 m
With Truncated Radials
Over Lake Michigan

Exhibit 3 Expanded Coverage Map



FCC Supplied Site #1
Latitude: 44-37-25 N
Longitude: 086-00-19 W
ERP: 6.00 kW
Channel: 291
Frequency: 106.1 MHz
AMSL: 338.0 m
HAAT: 100.0 m

Exhibit 4
Coverage Map of FCC Site #1



*The distance from Supplied Site # 1 to the FCC reference coordinates for Bear Lake, MI has been calculated to be 25.23 km.

Exhibit 5 **Tabulation of Allocation for FCC Site #1**

Alternative Site Proposed by FCC for Bear Lake, MI

REFERENCE	CLASS = A	DISPLAY DATES
44 37 25 N	Current	DATA 07-27-02
86 00 19 W	Spacings	SEARCH 07-31-02
----- Channel 291 - 106.1 MHz -----		

Call	Channel	Location	Power	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.	Ant			HAAT		

RADD	ADD 291A	Bear Lake	MI	39.04	212.7	115.0	-75.96
44 19 41	86 16 14		6.000 kW		100 M		

Counterproposal

RADD	ADD 291A	BEAR LAKE	MI	39.04	212.7	115.0	-75.96
44 19 41	86 16 14		6.000 kW		100 M		

Fort Bend Broadcasting

RADD	ADD 291A	Bear Lake	MI	40.82	205.4	115.0	-74.18
44 17 30	86 13 30		6.000 kW		100 M		

NULL

WKHQFM LIC 290C1	Charlevoix	MI	94.71	48.8	133.0	-38.29
45 10 49	85 05 50 CN	100.000 kW		272 M		

Macdonald Garber Broadcast BLH19960603KB

RDEL	DEL 292A	Walhalla	MI	69.65	189.4	72.0	-2.35
44 00 19	86 08 54		6.000 kW		100 M		

Counterproposal

WKLA FM LIC 292A	Ludington	MI	70.93	207.6	72.0	-1.07
44 03 27	86 24 58 CN	4.900 kW		110 M		

Lake Michigan Broadcasting BLH19931022KD

RDEL	DEL 292A	Ludington	MI	70.93	207.6	72.0	-1.07
44 03 27	86 24 58		6.000 kW		100 M		

RDEL	DEL 292A	Ludington	MI	70.93	207.6	72.0	-1.07
44 03 27	86 24 58		6.000 kW		100 M		

Counterproposal

RDEL	DEL 292A	Ludington	MI	70.93	207.6	72.0	-1.07
44 03 27	86 24 58		6.000 kW		100 M		

NULL

WJZJ LIC 238C2	Glen Arbor	MI	21.96	1.8	15.0	6.96
44 49 16	85 59 47 CN	21.000 kW		225 M		

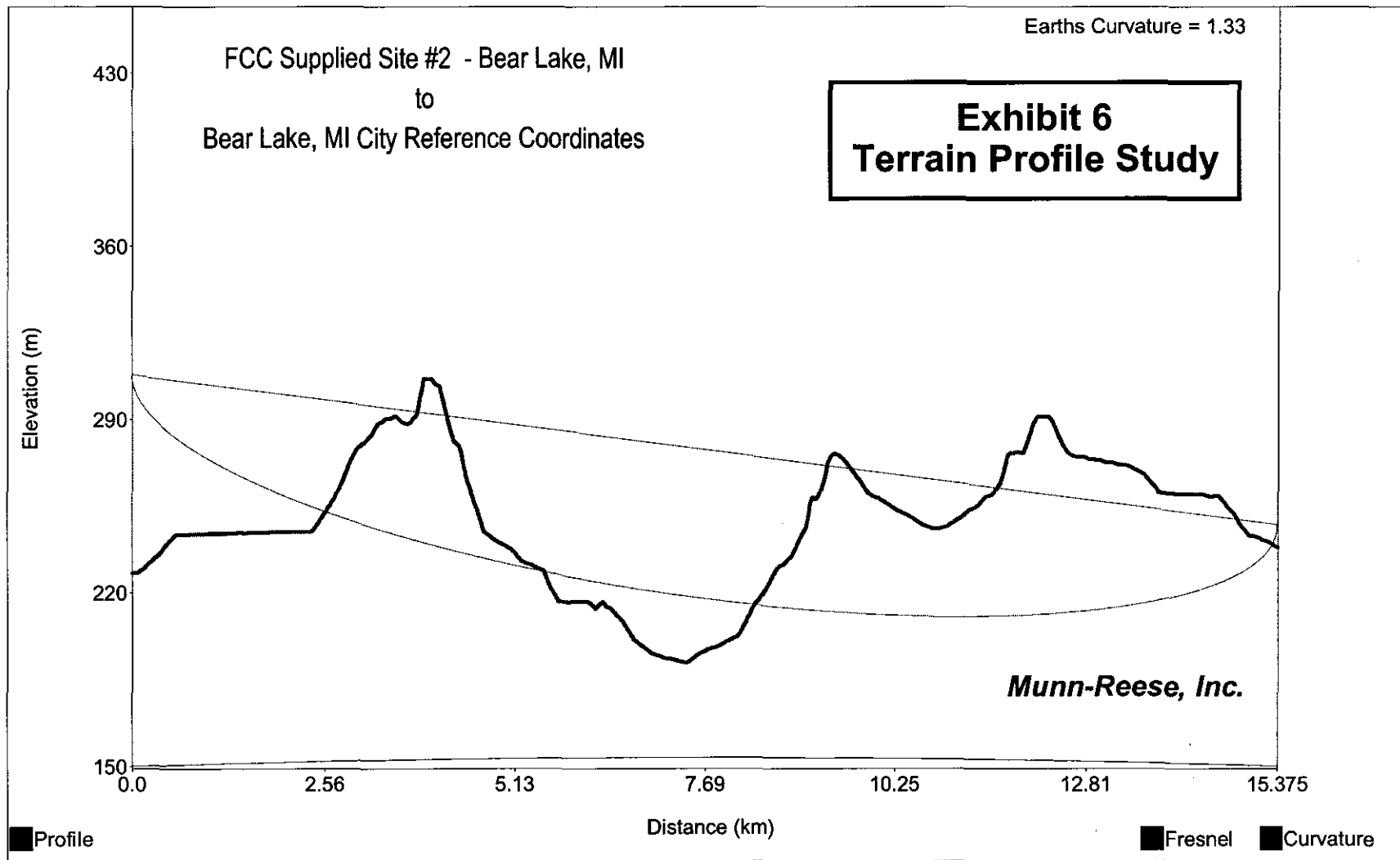
Northern Star Broadcasting BLH19970212KB

Specially negotiated, short-spaced allotment.

WKPK LIC 294C1	Gaylord	MI	102.97	62.5	75.0	27.97
45 02 42	84 50 44 CN	100.000 kW		177 M		

Northern Radio Of Gaylord, BLH19781221AB

MUNN-REESE, INC.
 Broadcast Engineering Consultants
 Coldwater, MI 49036



Starting Latitude: 44-17-37 N
Starting Longitude: 086-13-26 W

End Latitude: 44-25-15 N
End Longitude: 086-08-53 W

Distance: 15.375262761 km
Bearing: 23.129 deg

Transmitter Height (AG) = 80.0 m
Receiver Height (AG) = 9.1 m

Transmitter Elevation = 228.0 m
Receiver Elevation = 238.3 m

Frequency = 106.1 MHz
Fresnel Zone: 0.6

FCC Supplied Site #2
Latitude: 44-17-37 N
Longitude: 086-13-26 W
ERP: 6.00 kW
EIRP: 9.84 kW
Channel: 291
Frequency: 106.1 MHz
AMSL Height: 306.942 m
Elevation: 228.0 m
HAAT: 100.0 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: Longley/Rice
Climate: Cont temperate
Conductivity: 0.0020
Dielec Const: 15.0
Refractivity: 311.5
Receiver Ht AG: 9.1 m
Receiver Gain: 0 dB
Time Variability: 50.0%
St. Variability: 50.0%
ITM Model: Broadcast
Resolution: 0.1 km

Exhibit 7 Expanded Coverage Map

Bear Lake City Reference Limits

Coverage of Bear Lake, MI:
70 dBu f(50:50) FCC Curves - 0.0%
70 dBu Longley-Rice Method - 85.43%

70.0 dBu

Munn-Reese, Inc.

Scale 1:24,000
0 0.3 0.6 0.9 km

Coverage areas have been manually measured using a Bruning Model
OTT Polar Planimeter.

V-Soft Communications ©

FCC Supplied Site #2
Latitude: 44-17-37 N
Longitude: 086-13-26 W
ERP: 6.00 kW
Channel: 291
Frequency: 106.1 MHz
AMSL: 308.0 m
HAAT: 100.0 m*
With Truncated Radials
over Lake Michigan

Exhibit 8 Coverage Map of FCC Site #2

70 dBu City Coverage

16.2 km Class A City Reference Limit

Bear Lake

Kaleva

Onekama

Manistee
FCC Supplied Site #2

Manistee

Free Soil

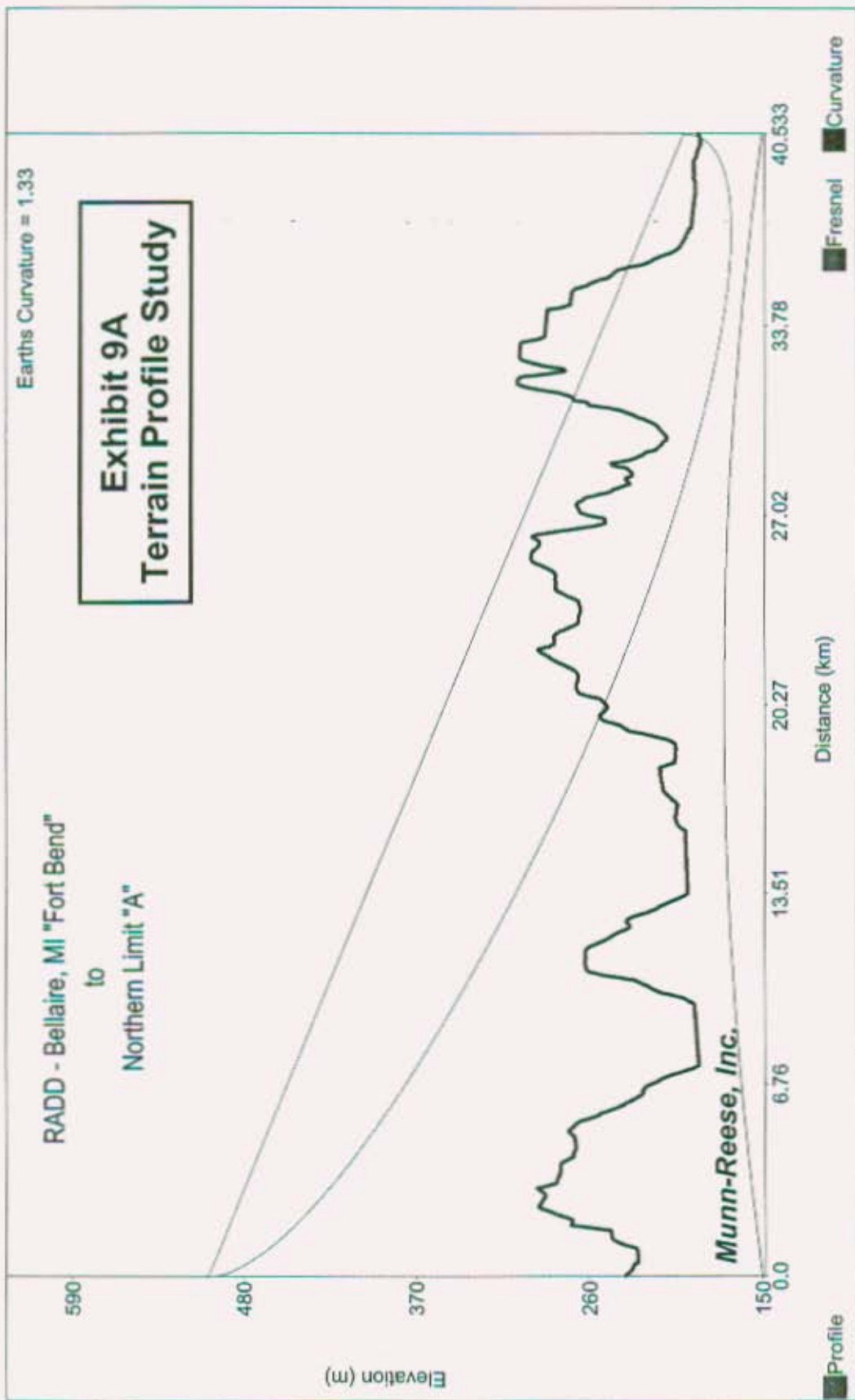
Fountain

Munn-Reese, Inc.

Scale 1:350,000
0 4 8 12 km

V-Soft Communications ©

* Radials 270° and 315° have been truncated in accordance with Sect. 73.313.



Starting Latitude: 45-20-48 N
Starting Longitude: 085-07-46 W

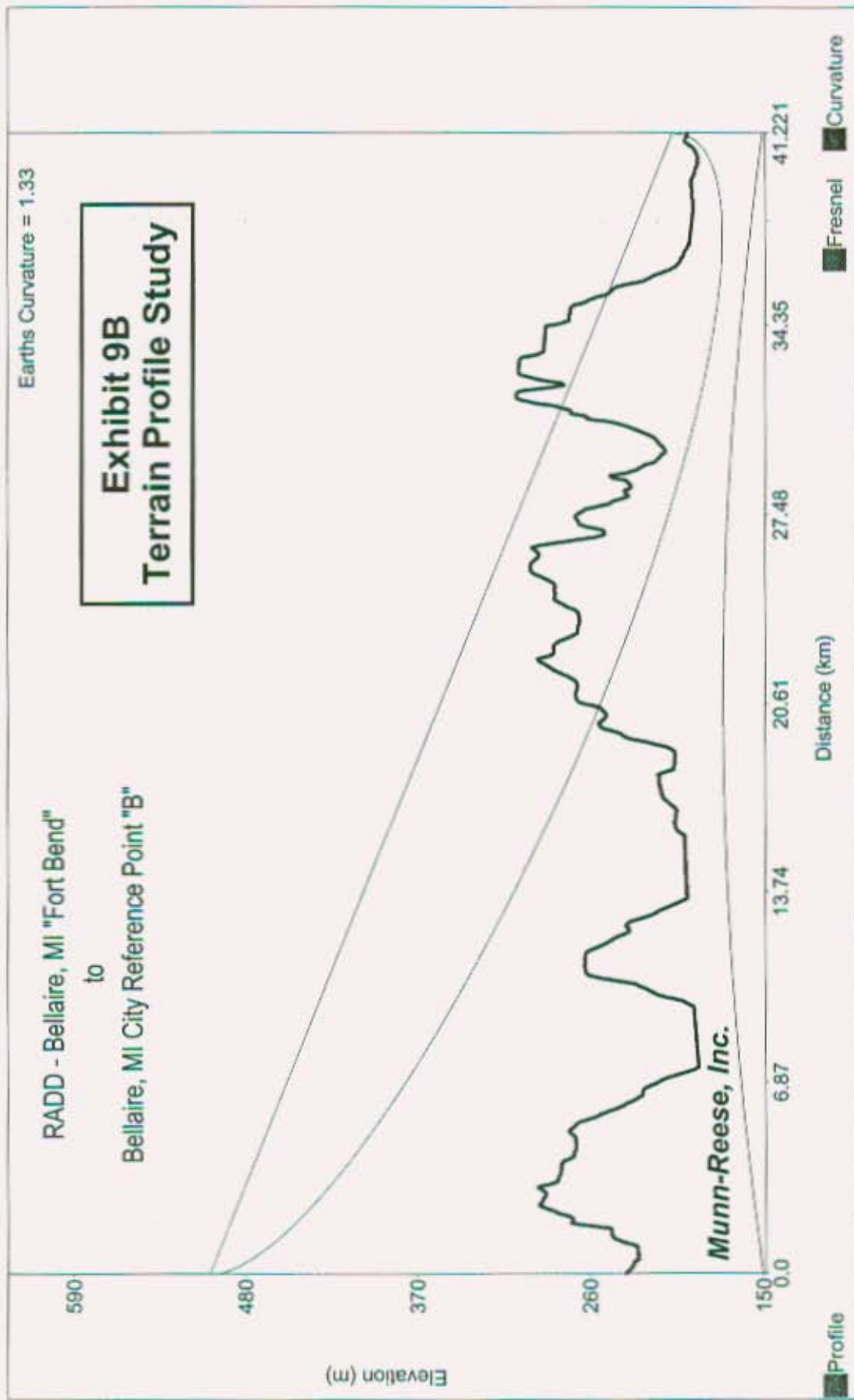
End Latitude: 44-59-11 N
End Longitude: 085-12-35 W

Distance: 40.533494101 km
Bearing: 188.986 deg

Transmitter Height (AG) = 268.2 m
Receiver Height (AG) = 9.1 m

Transmitter Elevation = 234.6 m
Receiver Elevation = 190.9 m

Frequency = 99.9 MHz
Fresnel Zone: 0.6



Earth's Curvature = 1.33

Distance: 41.221394191 km
Bearing: 188.990 deg

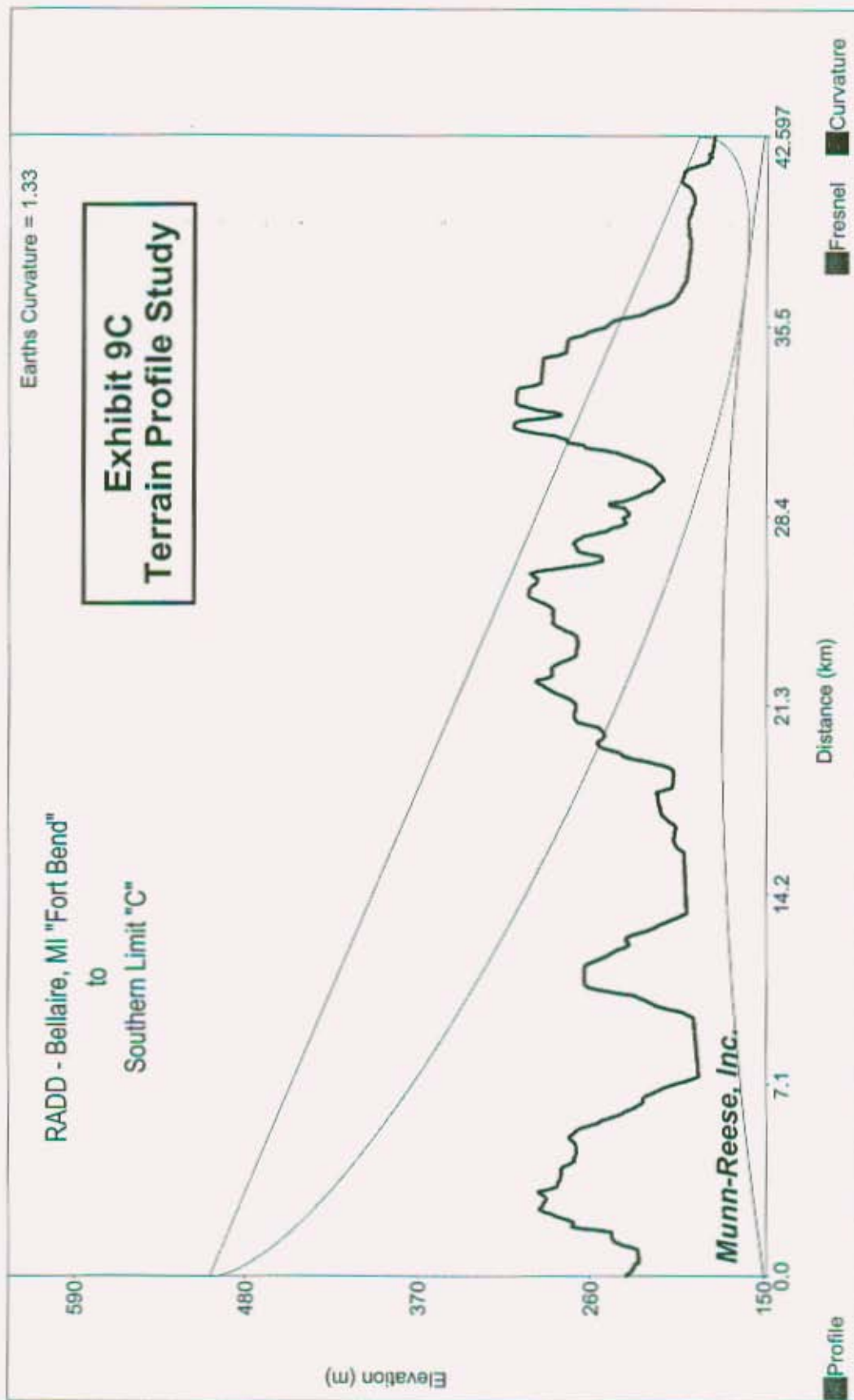
Frequency = 99.9 MHz
Fresnel Zone: 0.6

End Latitude: 44-58-49 N
End Longitude: 085-12-40 W

Transmitter Elevation = 234.6 m
Receiver Elevation = 198.0 m

Starting Latitude: 45-20-48 N
Starting Longitude: 085-07-46 W

Transmitter Height (AG) = 268.2 m
Receiver Height (AG) = 9.1 m



Starting Latitude: 45-20-48 N
Starting Longitude: 085-07-46 W

End Latitude: 44-58-05 N
End Longitude: 085-12-50 W

Distance: 42.597197656 km
Bearing: 188.998 deg

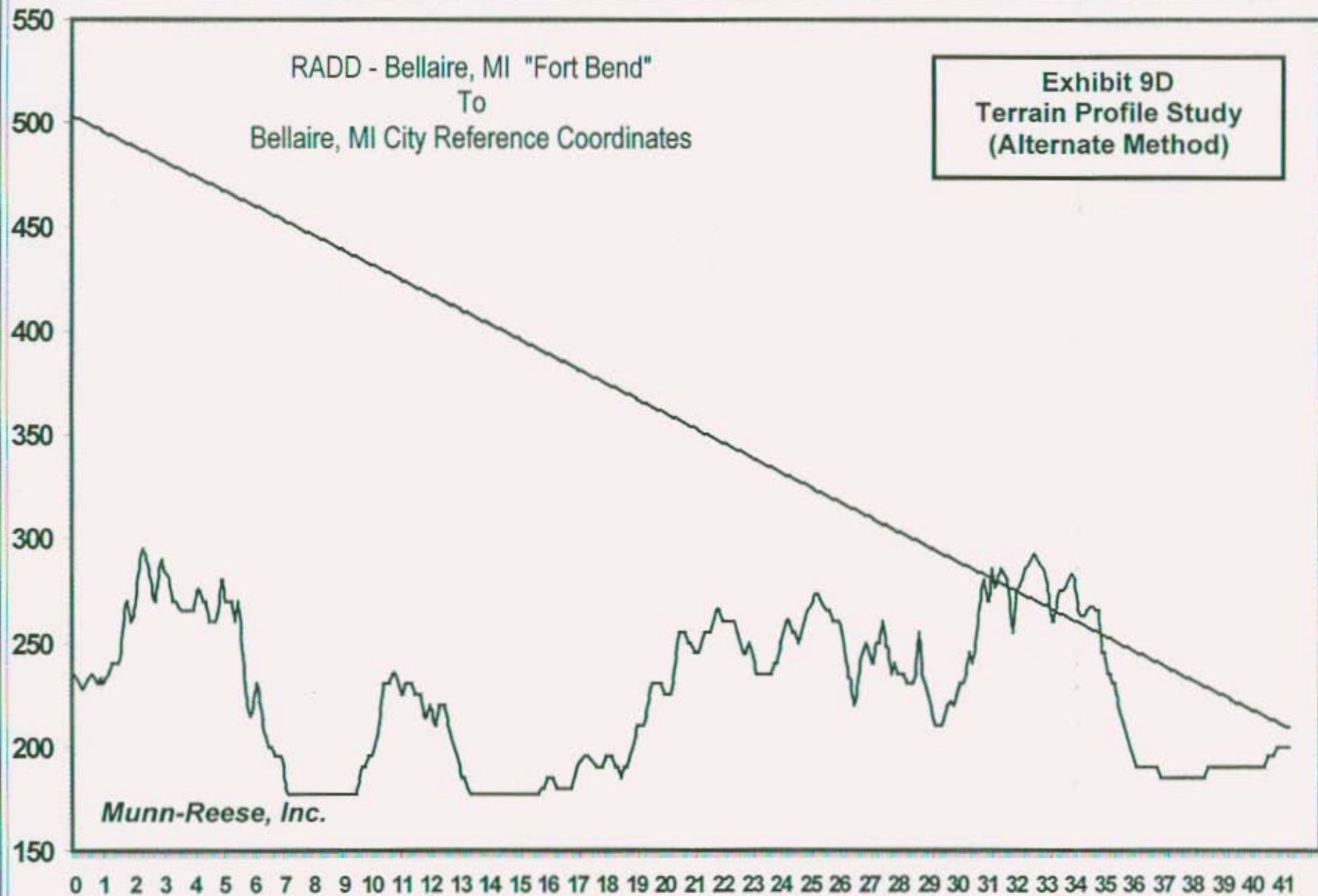
Transmitter Height (AG) = 268.2 m
Receiver Height (AG) = 9.1 m

Transmitter Elevation = 234.6 m
Receiver Elevation = 182.0 m

Frequency = 99.9 MHz
Fresnel Zone: 0.6

RADD - Bellaire, MI "Fort Bend"
To
Bellaire, MI City Reference Coordinates

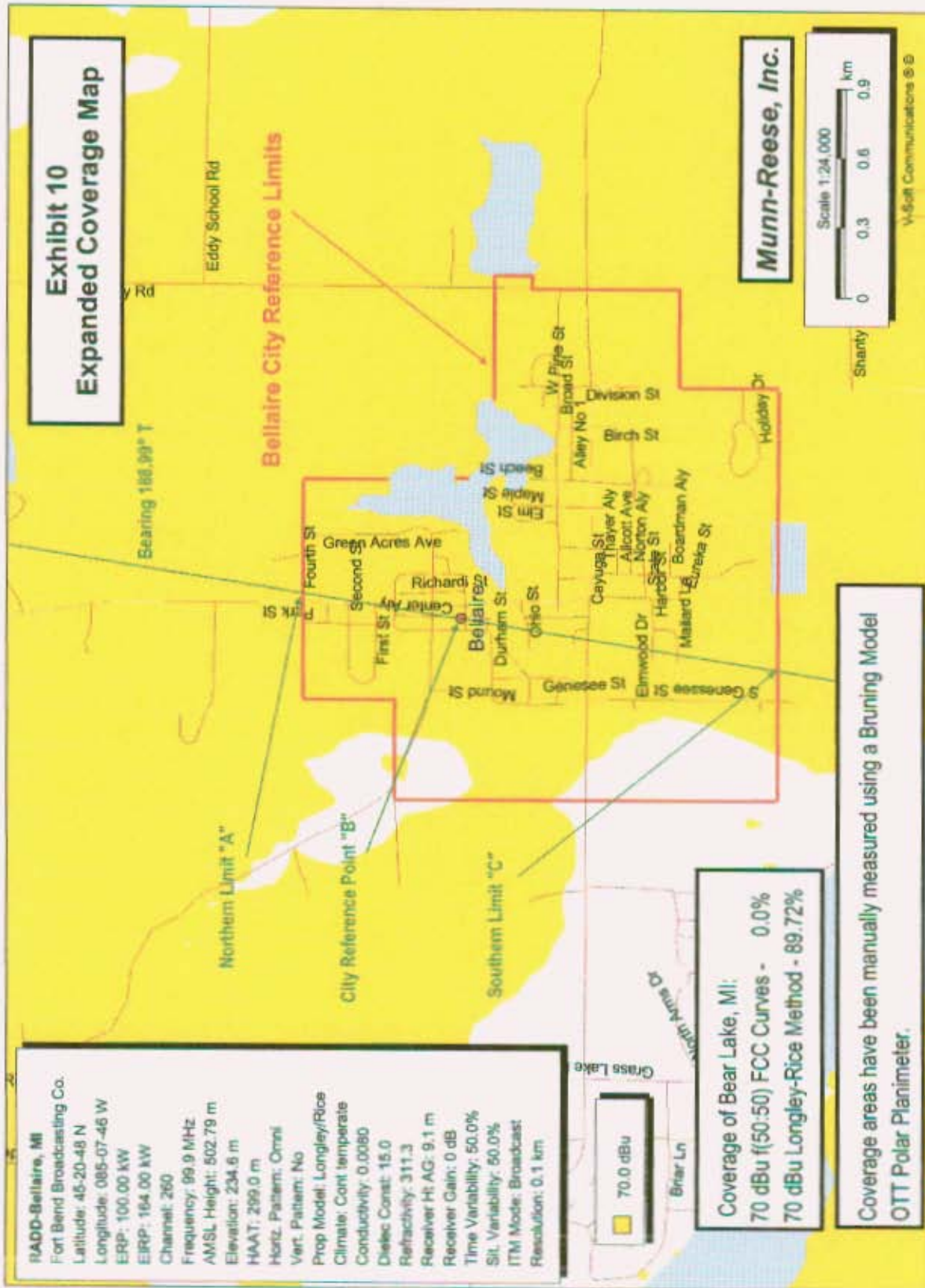
Exhibit 9D
Terrain Profile Study
(Alternate Method)



RADD-Bellaire, MI
 Fort Bend Broadcasting Co.
 Latitude: 45-20-48 N
 Longitude: 085-07-46 W
 ERP: 100.00 kW
 EIRP: 164.00 kW
 Channel: 260
 Frequency: 99.9 MHz
 AMSL Height: 502.79 m
 Elevation: 234.6 m
 HAAT: 299.0 m
 Horiz. Pattern: Omni
 Vert. Pattern: No
 Prop. Model: Longley/Rice
 Climate: Cont. temperate
 Conductivity: 0.0080
 Dielec Const: 15.0
 Refractivity: 311.3
 Receiver Ht AG: 9.1 m
 Receiver Gain: 0 dB
 Time Variability: 50.0%
 Sit. Variability: 50.0%
 ITM Mode: Broadcast
 Resolution: 0.1 km

Exhibit 10 Expanded Coverage Map

Bellaire City Reference Limits



Coverage of Bear Lake, MI:
 70 dBu f(50:50) FCC Curves - 0.0%
 70 dBu Longley-Rice Method - 89.72%

Coverage areas have been manually measured using a Bruning Model
 OTT Polar Planimeter.

Munn-Reese, Inc.

Scale 1:24,000
 0 0.3 0.6 0.9 km
 Shanty

V-Soft Communications S.B.

CERTIFICATE OF SERVICE

I, Janice M. Rosnick, hereby certify that on this 6th day of August, 2002, copies of the foregoing **REPLY COMMENTS** were hand delivered or mailed, first class, postage prepaid, to the following:

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Policy and Rules Division
Mass Media Bureau, Room 3-A266
Federal Communications Commission
The Portals
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Washington, D.C. 20554

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